

LAND BOARD AGENDA ITEM

August 18, 2008

REQUEST FOR CORRECTIVE DEED Pine Hills Old Campus Transfer to Custer County under Section 77-2-351 MCA

PROPOSAL: Custer County requests a corrective deed to clarify the operation of the reversionary terms of the original Grant Deed dated January 8, 2008 that conveyed the Pine Hills "Old Campus" under Section 77-2-351, MCA.

BACKGROUND: The County proposes a long-term lease to a non-profit corporation upon the former Pine Hills property, whose sole purpose is to provide expanded recreational opportunities for the public. The reversionary terms of the original Grant Deed do not explicitly support such a use. The enclosed Corrective Deed is intended by the State of Montana only to modify, clarify, and correct the reversionary terms of the original Grant Deed to include the proposed uses in the definition of "public purpose." The remainder of Grant Deed will remain unchanged.

HISTORY: The Land Board approved the transfer of the 17-acre Pine Hills "Old Campus to Custer County on December 17, 2007, in consideration of the County's promise to utilize the lands for public purposes. The above-described lands were conveyed to the County in January 2008. The January 8, 2008 grant deed conveying the property to the County contained a reversionary clause, which would cause the real property to revert to the State of Montana, should the lands cease to be used for a public purpose.

AGENCY RECOMMENDATION: DNRC requests final Land Board approval to grant a corrective deed to Custer County.

Leighton

Pine Hills School "Old Campus"
Transfer Parcel
(Approx 17.119 acres)

Haynes

GENERAL
CLUSTER
DORMITORY

SIDEWALK

SUNDANCE
DORMITORY

Auditorium

ELECTRIC AND
PLUMBING

LAUNDRY

LUMBER
SHED

BOILER
HOUSE

ROOT CELLAR

AUTO AND
CARPENTRY
SHOPS

FARM
SHOP

OLD
ADMINISTRATION

KITCHEN AND
STORES
WAREHOUSE

MACHINERY
SHED

> TO DAIRY BARN <

MAINTENANCE

ADMINISTRATION BUILDING/PODS A-E

FOX TROT-RANGE RIDER
DORMITORY

SCH.
ACADEMY

CORRECTIVE DEED

This Corrective Deed is made on the _____ day of August, 2008 by the State of Montana, State Board of Land Commissioners, and the Montana Department of Corrections, whose address is c/o Montana Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601 (hereinafter referred to cumulatively as the "Grantor") and CUSTER COUNTY, a political subdivision of the State of Montana (hereinafter referred to as the "Grantee"), whose address is Custer County, 1010 Main St., Miles City, MT (hereinafter referred to as "Grantee").

WHEREAS, pursuant to Montana Grant Deed #140704, dated January 8, 2008, and recorded January 17, 2008 in the office of the Custer County Clerk and Recorder, the Montana State Board of Land Commissioners, and the Montana Department of Corrections, as Grantor, previously conveyed pursuant to Section 77-2-351, MCA, the following described lands to the Grantee, Custer County:

A tract of land lying in the NW4NW4 of Section 35, Township 8 North, Range 47 East, more particularly described as follows: Beginning at a point on the north line of said Sec 35 lying S89°49'43"E, a distance of 59.93' from the NW corner of said section 35; thence continue easterly along said line, a distance of 895.70'; thence S00°24'24"E, a distance of 832.33'; thence N89°59'44", a distance of 339.58'; thence N02°21'48"E, a distance of 25.32'; thence N89°54'32"W, a distance of 1.50' to a witness corner; thence continue westerly along said line, a distance of 219.25'; thence N89°14'50"W, a distance of 346.31' to the easterly right-of-way line of Haynes Avenue; thence N00°04'09"W along said right-of-way line, a distance of 92.10'; thence N13°16'30"W along said right-of-way line a distance of 61.63'; thence N00°10'21"W along said right of way line, a distance of 520'; thence N13°57'32"E along said right of way line, a distance of 82.45'; thence N00°06'40"W along said right-of-way line, a distance of 52.66' to the POINT OF BEGINNING, containing 745,683 square feet or 17.119 acres, more or less.

WHEREAS, the above-described lands were conveyed in consideration of the Grantee, Custer County's promise to utilize the lands for public purposes;

WHEREAS, the Grantee, Custer County, now wishes to issue a long-term lease to a non-profit corporation upon the above-described lands, whose sole purpose is to provide expanded recreational opportunities for the public;

WHEREAS, the above-described conveyance contained a reversionary clause, which would cause the real property to revert to the Grantor, State of Montana, should the lands cease to be used for a public purpose;

WHEREAS, this Corrective Deed is issued pursuant to Montana Code Annotated Section 77-1-205 to: remove a cloud on the title of the affected lands; and clarify the operation of the reversionary terms of the Montana Grant Deed #140704 dated January 8, 2008, and recorded January 17, 2008 in the office of the Custer County Clerk and Recorder;

NOW, THEREFORE, the Grantor, State of Montana and Grantee, Custer County, in consideration of One Dollar, and other good and valuable consideration hereby modify Montana Grant Deed #140704, as follows:

The following language is stricken from the Deed:

PROVIDED FURTHER, in accordance with §77-2-351, MCA, in the event that the above-described land shall cease to be used for a public purpose or cease to be owned by the Grantee, upon written notice to the Grantee by the Grantor, title to the above-described land shall revert to the Montana Department of Corrections. For the purpose of determining whether a reversion of title has occurred, a "public purpose" shall not include the construction or operation of any public parking lot, restaurant, bar, hotel, motel, private office space, retail store, storage space, gas station, convenience store, shopping center, or private residence, or any similar commercial private enterprise. Within 30 days of such notice of reversion, the Grantee may request a contested case hearing before the Board or the Board's designee to determine whether the terms of this Deed have been violated and reversion of this land is warranted. The Board shall be the trier of fact and its decision shall be reviewable by

the local District Court as any other decision under a contested case proceeding under § 2-4-701, et seq., MCA.

The following language is inserted into the Deed:

PROVIDED FURTHER, in accordance with §77-2-351, MCA, in the event that the above-described land shall cease to be used for a public purpose or cease to be owned by the Grantee, upon written notice to the Grantee by the Grantor, title to the above-described land shall revert to the Montana Department of Corrections. For the purpose of determining whether a reversion of title has occurred, a "public purpose" shall include the leasing of the above-described property by the Grantee, Custer County, to any non-profit entity whose purpose is to provide recreational opportunities or other services to the public. By contrast, a "public purpose" shall not include the commercial operation by any for-profit entity of any public parking lot, restaurant, bar, hotel, motel, private office space, retail store, storage space, gas station, convenience store, shopping center, or private residence, or any similar commercial private enterprise. Within 30 days of such notice of reversion, the Grantee may request a contested case hearing before the Board or the Board's designee to determine whether the terms of this Deed have been violated and reversion of this land is warranted. The Board shall be the trier of fact and its decision shall be reviewable by the local District Court as any other decision under a contested case proceeding under § 2-4-701, et seq., MCA.

This Corrective Deed is intended by the State of Montana only to modify, clarify, and correct the reversionary terms of the Grant Deed. The remainder of Montana Grant Deed #140704 dated January 8, 2008 remains unchanged and is hereby ratified by the State of Montana.

IN TESTIMONY WHEREOF the State of Montana has caused these presents to be executed by the Governor and to be attested by the Secretary of State and countersigned by the Directors of the Department of Natural Resources and Conservation, and Department of Corrections and the Great Seal of the State, and the Seal of the State Board of Land Commissioners to be hereunto affixed this ____ day of _____, 2008.

Governor Brian Schweitzer

Attest: _____
Brad Johnson, Secretary of State

Counter-signed: _____
Mike Ferriter, Director
Department of Corrections

Accepted by CUSTER COUNTY
BOARD OF COMMISSIONERS: _____
Jack A. Nesbit, Chairman

Milo Huber, Board Member

Gary Matthews, Board Member